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15 **BEFORE THE**  
16 **BOARD OF REGISTERED NURSING**  
17 **DEPARTMENT OF CONSUMER AFFAIRS**  
18 **STATE OF CALIFORNIA**

19 In the Matter of the Accusation Against:

Case No. *2013-541*

20 **FRANCIS VIRAY JUAN**  
21 **11722 John Avenue**  
22 **Garden Grove, CA 92840**

**A C C U S A T I O N**

23 **Registered Nurse License No. 731227**

24 Respondent.

25 Complainant alleges:

26 **PARTIES**

27 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
28 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
Consumer Affairs.

2. On or about July 14, 2008, the Board of Registered Nursing issued Registered Nurse  
License Number 731227 to Francis Viray Juan (Respondent). The Registered Nurse License was  
in full force and effect at all times relevant to the charges brought herein and will expire on  
October 31, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or  
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the  
following:

9 . . . .

10 (f) Conviction of a felony or of any offense substantially related to the  
11 qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof.

12 . . . .

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning  
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
licensed under this chapter to do any of the following:

16 . . . .

17 (b) Use any controlled substance as defined in Division 10 (commencing with  
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
19 dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,  
or self-administration of any of the substances described in subdivisions (a) and (b) of  
22 this section, or the possession of, or falsification of a record pertaining to, the  
substances described in subdivision (a) of this section, in which event the record of  
23 the conviction is conclusive evidence thereof.

24 . . . .

25 11. Section 2765 of the Code states:

26 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
27 made to a charge substantially related to the qualifications, functions and duties of a  
registered nurse is deemed to be a conviction within the meaning of this article. The  
28 board may order the license or certificate suspended or revoked, or may decline to  
issue a license or certificate, when the time for appeal has elapsed, or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

## REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

13. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

## COSTS

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case, with failure of the licensee to comply subjecting the license to not being  
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
4 included in a stipulated settlement.

### 5 **DRUGS**

6 15. Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety Code  
7 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section  
8 4022.

9 16. Vicodin, the brand name for acetaminophen and hydrocodone bitartrate, a Schedule III  
10 controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous  
11 drug pursuant to Business and Professions Code section 4022.

### 12 **FIRST CAUSE FOR DISCIPLINE**

#### 13 **(December 21, 2011 Criminal Conviction for DUI/Drugs on June 13, 2011)**

14 17. Respondent has subjected his license to disciplinary action under sections 490 and  
15 2761, subdivision (f) of the Code in that he was convicted of a crime that is substantially related  
16 to the qualifications, functions, and duties of a registered nurse. The circumstances are as  
17 follows:

18 a. On or about December 21, 2011, in a criminal proceeding entitled *People of the*  
19 *State of California v. Francis Joy Ciray Juan, aka Francis V. Juan, aka Francis Viray Juan, aka*  
20 *Francis Joyviray Juan*, in Orange County Superior Court, case number 11WM11436, Respondent  
21 was convicted on his plea of guilty of violating Vehicle Code section 23152, subdivision (a),  
22 driving under the influence of alcohol/drugs, a misdemeanor. Respondent was released on his  
23 own recognizance and ordered to submit to Secure Continuous Remote Alcohol Monitoring  
24 (SCRAMX).<sup>1</sup>

25  
26 <sup>1</sup> The SCRAMX device is a tamper-resistant bracelet that a DUI offender wears around  
27 his/her ankle. The SCRAMX bracelet tests the DUI offender's sweat for alcohol at least once per  
28 hour. The SCRAM bracelet wirelessly transmits the results at least once per day via the  
SCRAMX modem to a regional monitoring center. If the DUI defendant removes the SCRAMX  
bracelet or consumes alcohol, the regional monitoring center will notify the court.

b. As a result of the conviction, on or about May 10, 2012, Respondent was granted five years informal probation, and complete 120 days with the SCRAMX device. Respondent was required to attend and complete an 18-month Multiple Offender Alcohol Program and a MADD Victim Impact Panel session, to run concurrent with the programs ordered in case number 11HM16833, in paragraph 18, below. Respondent was further ordered to pay fees, fines, and restitution, and comply with enhanced DUI probation terms.

c. The facts that led to the conviction are that on or about the evening of June 13, 2011, officers from the Garden Grove Police Department responded to a report of a collision with a possible DUI driver. Their investigation revealed that Respondent rear-ended a vehicle in traffic, drove away, then rear-ended a nearby parked vehicle. Witnesses and victims corroborated the facts regarding the collisions. Officers observed that Respondent had bloodshot, watery eyes and slurred speech; his gait was unsteady, and he had difficulty standing. Respondent was unable to complete the field sobriety tests and he was arrested for driving under the influence. During booking, Respondent stated that he had consumed beer the day before, and that he had also consumed Restoril for insomnia and Vicodin for pain. Respondent provided a blood sample which tested positive for aminoclonazepam, Clonazepam, and hydrocodone. Respondent's blood tested negative for the presence of alcohol.

#### **SECOND CAUSE FOR DISCIPLINE**

##### **(December 21, 2011 Criminal Conviction for DUI on October 2, 2011)**

18. Respondent has subjected his license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about December 21, 2011, in a criminal proceeding entitled *People of the State of California v. Francis Joy Ciray Juan, aka Francis V. Juan, aka Francis Viray Juan, aka Francis Joyviray Juan*, in Orange County Superior Court, case number 11HM16833, Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol/drugs; and Vehicle Code section 23152, subdivision (b),

1 driving with a blood alcohol concentration (BAC) of .08 percent or more, misdemeanors.

2 Respondent was released on his own recognizance and ordered to submit to SCRAMX.

3 b. As a result of the conviction, on or about May 10, 2012, Respondent was  
4 ordered to serve 120 days in the Orange County Jail, with credit for 120 days, and granted five  
5 years summary probation. Respondent was further ordered to complete an 18-month Multiple  
6 Offender Alcohol Program, and a MADD Victim's Impact Panel, to be completed concurrent to  
7 the sentence imposed in case number 11WM11436, described in paragraph 17, above.  
8 Respondent was further ordered to pay fees, fines, and restitution, and comply with enhanced  
9 DUI probation terms. The court certified Respondent's BAC as .11 percent.

10 c. The facts that led to the conviction are that shortly after midnight, on or about  
11 October 2, 2011, patrol officers with the Newport Beach Police Department were conducting DUI  
12 enforcement when they observed Respondent make an illegal U-Turn. After conducting a traffic  
13 stop, they detected a strong odor of an alcoholic beverage emitting from his breath and person.  
14 At one point, Respondent lost his balance and almost fell to the ground. Respondent's eyes were  
15 bloodshot and watery, and his speech was thick and slurred. Respondent admitted consuming  
16 beer earlier in the evening, and he also consumed pseudoephedrine. Respondent submitted to a  
17 series of field sobriety tests, none of which he was able to complete satisfactorily. Respondent  
18 was arrested for driving under the influence.

### 19 **THIRD CAUSE FOR DISCIPLINE**

#### 20 **(Use of Alcohol and Controlled Substances/Medications in a Dangerous Manner)**

21 19. Respondent has subjected his registered nurse license to disciplinary action under  
22 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about June 13,  
23 2011, and October 2, 2011, as described in paragraphs 17 and 18, above, Respondent used a  
24 combination of controlled substances, medications, and alcoholic beverages to an extent or in a  
25 manner that was dangerous and injurious to himself, and to others in that he operated a motor  
26 vehicle while significantly impaired.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Convictions for Drug & Alcohol-Related Criminal Offenses)**

3 20. Respondent has subjected his registered nurse license to disciplinary action under  
4 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about  
5 December 21, 2011, as described in paragraphs 17 and 18, above, Respondent was convicted in  
6 two separate criminal cases involving the consumption of alcohol and/or drugs.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number 731227, issued to Francis  
11 Viray Juan;

12 2. Ordering Francis Viray Juan to pay the Board of Registered Nursing the reasonable  
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
14 Code section 125.3;

15 3. Taking such other and further action as deemed necessary and proper.  
16  
17

18 DATED: *January 7, 2013*

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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